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7 UNITED STATES DISTRICT COURT  
8 NORTHERN DISTRICT OF CALIFORNIA  
9 SAN FRANCISCO DIVISION

10 IN RE OPTICAL DISK DRIVE PRODUCTS  
11 ANTITRUST LITIGATION

Case No. 3:10-md-2143 RS (JCS)

12 This document relates to:  
13  
14 ALL ACTIONS

~~PROPOSED~~ ORDER RE DEPOSITION  
PROTOCOL NO. 2

ACTION FILED: Oct. 27, 2009

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1                   Good cause appearing, it is hereby ORDERED as follows:

2                   **I. DEPOSITION PROCEDURES**

3                   A.        This Order Re Deposition Protocol No. 2 is intended to supplement the Court's  
 4 prior Orders regarding depositions, including the Case Management Order dated July 17, 2012  
 5 (dkt. 606); Order Re Deposition Scheduling dated August 31, 2012 (dkt. 631); Order Re  
 6 Location of Depositions dated October 24, 2012 (dkt. 707); and Order Re Discovery Matters  
 7 dated December 17, 2012 (dkt. 730). Nothing herein shall alter or change the Court's prior  
 8 Orders regarding depositions.

9                   B.        To the extent that any Party contends that the time provided for deposition in Rule  
 10 30(d)(1), namely that an individual fact deposition is limited to 1 day of 7 hours, or the time  
 11 provided for deposition as modified by this Order is insufficient to adequately complete a  
 12 particular deposition, counsel for the Party and counsel for the witness shall, prior to any relief  
 13 being sought from the Court pursuant to the Court's Standing Order on Discovery Disputes, meet  
 14 and confer in accordance with that Order to attempt to reach agreement on the length of the  
 15 deposition.

16                   C.        Each Party shall have a reasonable opportunity to cross-examine a witness  
 17 without need for a cross-notice of deposition and any cross examination is not limited to the  
 18 scope of the direct examination.

19                   D.        Any Party may seek leave of Court, pursuant to Fed. R. Civ. P. 30(a)(2)(A)(ii), to  
 20 take a second deposition of any witness.

21                   E.        For purposes of this order, the term "Direct Action Plaintiff" means an individual,  
 22 corporation, or state government bringing a non-class action proceeding regarding an antitrust  
 23 conspiracy in the ODD industry, which action has been either (i) transferred to this MDL by the  
 24 Judicial Panel for Multidistrict Litigation, or (ii) ordered "related" under Civil Local Rule 3-12.  
 25 Each Direct Action Plaintiff is to be considered one of the parties or Parties as those terms are  
 26 used herein. The term "Plaintiffs" shall mean and refer collectively to all Direct Purchaser  
 27 Plaintiffs, Indirect Purchaser Plaintiffs, and Direct Action Plaintiffs.

28                   F.        All deposition limitations may be modified for good cause or by agreement.

1           G.     In the event that an opposing Party cross-notices a deposition, the total deposition  
 2 time shall be divided equally between Plaintiffs and Defendants, and the deposition shall be  
 3 scheduled for an additional consecutive day of 7 hours. All Plaintiffs may split the total  
 4 deposition time allocated to Plaintiffs as they see fit, and all Defendants may split the total  
 5 deposition time allocated to Defendants as they see fit. The parties shall meet and confer in good  
 6 faith to discuss their anticipated examination time in advance of any scheduled deposition. The  
 7 parties also recognize that exceptional circumstances may arise for a particular witness where  
 8 additional examination time is warranted, and agree to discuss in good faith reasonable requests  
 9 for the extension of the default examination time.

10           H.     Defendants, as a group, may notice the deposition of each named Direct Purchaser  
 11 Plaintiff and Indirect Purchaser Plaintiff, and each Defendant family may notice the deposition of  
 12 up to 25 individual fact witnesses of other Defendant families, inclusive of cross-noticed  
 13 depositions. Defendants may notice the depositions of up to 15 current and former employees of  
 14 each non-governmental Direct Action Plaintiff corporate family as fact witnesses, and may  
 15 notice 5 Rule 30(b)(6) witnesses from each non-governmental Direct Action Plaintiff corporate  
 16 family. Defendants may notice the depositions of up to 3 current and former employees of each  
 17 named governmental Direct Action Plaintiff as fact witnesses, and may notice up to 2 Rule  
 18 30(b)(6) witnesses from each named governmental Direct Action Plaintiff.

19           I.     This limitation will not affect the rights of a Party to seek to depose as a fact  
 20 witness an individual who has been previously deposed solely as a corporate representative of a  
 21 Party designated under Fed. R. Civ. P. 30(b)(6), or of other Parties to object to such depositions.  
 22 Nor will this procedure affect the rights of a Party to seek a corporate representative deposition  
 23 under Fed. R. Civ. P 30(b)(6) when the corporate representative has been previously deposed as a  
 24 fact witness, or of other Parties to object to such depositions. The parties will make a good faith  
 25 effort to coordinate the timing of the depositions of a corporate representative designated under  
 26 Fed. R. Civ. P. 30(b)(6) and the deposition of that individual as a fact witness, where possible.

27           **II. LIAISON COUNSEL FOR DEPOSITION SCHEDULING**

28           Each of the Parties shall select one attorney to serve as its liaison counsel for purposes of

1 communications related to the scheduling of depositions in this case. To the extent reasonably  
 2 practicable, following service of any deposition notice or subpoena in this case, each of the  
 3 Parties' liaison counsel shall be copied on all written correspondence that relates to deposition  
 4 scheduling or location issues. The Parties will cooperate in the scheduling of all depositions.

5 **III. DEPARTING EMPLOYEES**

6 The Court's Order re Location of Depositions (dkt. 707) requires that, "[i]f a defendant  
 7 becomes aware that the employment status of any witness on plaintiffs' list will change during  
 8 the course of this litigation, the defendant family must provide reasonable notice to plaintiff prior  
 9 to the departure of that employee and make that witness available for deposition prior to the  
 10 employee's departure, to the extent reasonably possible." As part of this notice and to the extent  
 11 reasonably possible, the defendant shall either propose a date and location for the deposition of  
 12 the departing witness prior to the employee's departure or agree to make that departing witness  
 13 available for deposition after his or her departure. The defendant will cooperate with plaintiffs'  
 14 counsel to produce any documents from the departing witness's files in a timely manner, but no  
 15 later than 30 days before the departing witness's scheduled deposition date absent agreement of  
 16 the Parties or good cause.

17 **IV. INTERPRETERS AND INTERPRETED TESTIMONY**

18 A. Any Party or witness intending to use an interpreter shall give notice that an  
 19 interpreter will be required within 10 days of receiving notice of the deposition. Any Party  
 20 requesting an interpreter shall bear the expense of providing their own interpreter. The lead  
 21 interpreter shall be selected by the Party taking the deposition. In no event shall the lead  
 22 interpreter participate in the preparation of the deponent.

23 B. If any Party brings a "check" interpreter to a deposition, and that "check"  
 24 interpreter objects to any portion of an interpretation or translation, the objection shall be stated  
 25 simply for the record. The interpreter of record need not respond. All questions, answers, and  
 26 objections shall be interpreted for the witness as necessary; however, all counsel shall refrain  
 27 from unnecessary colloquy and speaking objections, so as not to obstruct the depositions.

28 C. The Parties shall use reasonable efforts at the deposition to resolve any objection

1 to any interpretation or translation.

2       D. To the extent a witness requests an interpreter, the Parties anticipate that the  
 3 interpreter will be used either for all of the deposition or for only a small number of questions.  
 4 To the extent an interpreter is used for all or nearly all of the deposition, the time limits set forth  
 5 in Fed. R. Civ. P. 30(d)(1) or as modified by this Order shall be doubled. In all other situations,  
 6 the Parties shall cooperate in good faith to extend the time limit set forth in Fed. R. Civ. P.  
 7 30(d)(1) to account for the use of an interpreter, guided by the principle that deposition time  
 8 during which an interpreter is used should be counted at 50% or one half the actual amounts  
 9 against the time limit.

10       E. For documents that have been translated, the translation should share the same  
 11 exhibit number as the underlying document and should be followed with the letter "A" signifying  
 12 it as a translated version of the document. If another party (or parties) introduces a subsequent  
 13 translation of the same underlying document, the subsequent translation(s) should also share the  
 14 same exhibit number as the underlying document and should be followed consecutively with the  
 15 letter "B," "C," etc. Should a translated document entered into the record become altered as a  
 16 result of resolved objections to the translation, the updated version should be labeled with the  
 17 same numbered designation and followed with "AF" (or "BF" or "CF", etc.) signifying a final  
 18 translated version.

19       F. Certified translations must be sworn to as being an accurate translation by a  
 20 qualified translator. Objections to the accuracy of the certified translation of a document offered  
 21 at deposition (the "initial translation") shall be asserted no later than thirty days after the earlier  
 22 of: (i) such initial translation is offered as part of a court filing; or (ii) designated on any party's  
 23 trial exhibit list or in any party's preliminary trial exhibit list of translated documents. Each  
 24 party, in addition to any requirements imposed by the Court on pretrial filings, shall serve and  
 25 file a preliminary exhibit list of translated documents 90 days before the exhibit lists for trial are  
 26 due to be exchanged. While the parties will not be limited to the use of this list at trial, the  
 27 parties shall use good faith efforts to limit this preliminary list to translated documents that they  
 28 actually intend to use at trial. For each objection to accuracy, the objecting party shall provide a

1 certified translation (the “opposing translation”) containing the objecting party’s opposing  
 2 translation. The parties must then meet and confer promptly to attempt to resolve the disputed  
 3 translations. If the opposing translation purports to materially change the substance of a  
 4 witness’s prior deposition testimony, the party offering at deposition the initial translation shall  
 5 have the right to take limited discovery, including additional testimony, to address whether the  
 6 opposing translation changes the substance of that witness’s prior testimony.

7 **V. DEPOSITION EXHIBITS**

8       A. In accordance with Local Rule 30-2(b)(3), to the extent practicable, any exhibit  
 9 which is an exact duplicate of an exhibit previously numbered must bear the same exhibit  
 10 number, regardless of which Party is using the exhibit. Any new document, or any version of  
 11 any exhibit which is not an exact duplicate, must be marked and treated as a different exhibit  
 12 bearing a new exhibit number.

13       B. To the extent reasonably possible, all exhibits shall be marked sequentially. In  
 14 the case of multiple depositions occurring on or about the same date, deposition liaison counsel  
 15 for the Parties shall meet and confer in advance of the depositions and attempt to allocate a range  
 16 of sequential exhibit numbers to each deposition.

17       C. If a Party intending to examine a deponent so chooses, not later than four (4)  
 18 business days before a deposition, it may serve on deposition liaison counsel for all Parties via  
 19 electronic mail, a non-binding list of documents (identified by Bates number) that the Party  
 20 anticipates using or referring to during the deposition. If a Party serves a non-binding list of  
 21 documents, examining counsel is not responsible for bringing to the deposition copies of pre-  
 22 designated exhibits for other counsel. Counsel are not obligated to pre-designate exhibits. Any  
 23 examining counsel who chooses not to pre-designate some or all of the documents to be used at a  
 24 deposition shall not forfeit the right to use them, but in that case shall bring sufficient copies of  
 25 such documents to the deposition. With respect to all exhibits that have been marked and used in  
 26 a prior deposition, “sufficient copies” shall mean at least four (4) hardcopies. With respect any  
 27 “new” exhibits (*i.e.*, an exhibit that has not been marked and used in prior deposition), “sufficient  
 28 copies” shall mean at least eight (8) hardcopies. In all events, examining counsel, defending

1 counsel, and all other counsel attending the deposition shall cooperate in good faith so that  
 2 counsel for each Party attending the deposition will have adequate access during the deposition  
 3 to any exhibit used by examining counsel during the deposition.

4 **VI. PARTICIPATION BY TELECONFERENCE**

5 To minimize travel and related costs, counsel may participate in any deposition by  
 6 telephone to the extent practicable. Counsel intending to do so must notify counsel for the Party  
 7 that noticed the deposition and counsel for the witness at least seven (7) business days before the  
 8 date of the deposition. Counsel noticing the deposition shall make arrangements so that a  
 9 conference call line and a real-time video and text feed are available during the deposition, to the  
 10 extent practicable. The Parties participating by telephone shall bear the costs of the conference  
 11 call and/or live video and text feed, to the extent one is used. To the extent that it is not  
 12 practicable to provide a conference call line and a real time video and text feed, counsel noticing  
 13 the deposition must make reasonable efforts to cause all liaison counsel to be notified that a  
 14 conference call line and/or a real time video and text feed will not be provided at least five (5)  
 15 business days before the date of the deposition. Examining counsel and counsel intending to  
 16 participate by telephone shall cooperate in good faith to facilitate such participation, including  
 17 reasonable efforts to identify any exhibit used during the deposition by bates number.

18 **VII. CONDUCT DURING DEPOSITIONS**

19 A. All depositions shall be governed by a rule that any objection to the form of a  
 20 question shall be deemed to have been made on behalf of all other Parties. Counsel shall refrain  
 21 from making duplicative objections to the same question, so as not to obstruct the depositions.

22 **VIII. STANDARD STIPULATION**

23 The following stipulation shall apply to all depositions taken in these actions and shall be  
 24 included in each transcript by the court reporter:

25 1. Upon completion of the transcription of today's session, the  
 26 original transcript shall be sent to counsel for the witness by the  
 27 court reporter. Counsel shall promptly forward it to the witness for  
 28 review, correction, and signature under penalty of perjury. Within

1                   30 days of receiving the transcript from the court reporter, the  
 2 witness's counsel shall then forward the original transcript plus  
 3 corrections to the court reporter, who will promptly notify all  
 4 counsel of its receipt and any changes to testimony made by the  
 5 witness.

6                   2. If the witness is not represented by counsel, the original  
 7 transcript will be sent to the witness by the court reporter. After  
 8 review, correction, and signature within 30 days from the date of  
 9 receipt, the witness shall return the original transcript to the court  
 10 reporter, who will notify all counsel of its receipt and any changes  
 11 to testimony made by the witness.

12                  3. The court reporter will provide the original transcript to the  
 13 first examining attorney. If, for any reason, the original is lost,  
 14 misplaced, not returned, not signed, or unavailable, a certified copy  
 15 may be used in its place for all purposes.

16 **IX. FIFTH-AMENDMENT ASSERTIONS**

17                  A. Upon receipt of notice that a witness intends to assert his or her Fifth Amendment  
 18 right, the noticing Party's and any other examining Party's attorneys may submit a list of written  
 19 questions to the witness to speed up the deposition, delivered to each Party no fewer than five (5)  
 20 business days before the scheduled deposition. At the deposition, the written questions and any  
 21 associated documents shall be introduced as an exhibit to the deposition, and the witness shall be  
 22 asked summarily whether the witness would assert the Fifth Amendment to each of the written  
 23 questions if they were posed individually. If the answer to the summary question is "yes," the  
 24 deposition shall last no more than one hour. To the extent the answer to the summary question is  
 25 "yes," use of the questions and answers at trial shall not be precluded on the basis that the written  
 26 questions were not asked and answered individually. The use of the written questions and  
 27 associated documents shall not prevent questions from being asked other than those contained in  
 28 the written ones subject to the time limits described herein and under the Federal Rules of Civil

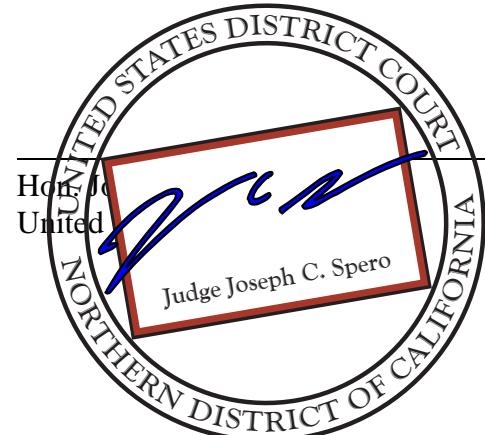
1 Procedure.

2 B. All objections to written questions submitted to a deponent will be reserved,  
 3 including objections to form.

4 C. Any person who at deposition asserts his or her right not to testify under the Fifth  
 5 Amendment of the United States Constitution will be bound by that assertion of the privilege and  
 6 shall not be permitted to revoke that assertion and testify otherwise at trial if allowing the person  
 7 to testify would be unduly prejudicial to another Party. There is no undue prejudice where notice  
 8 of intent to revoke is provided and the person is made available for deposition 30 days prior to  
 9 the close of fact discovery. A rebuttable presumption of undue prejudice shall apply, however, if  
 10 the person, after revoking the assertion of the privilege, is not made available for deposition at  
 11 least 30 days prior to the close of fact discovery. Notice of intent to revoke the assertion of  
 12 privilege shall be provided to all Parties in writing. If such notice is provided and the person is  
 13 not available for deposition until after the close of fact discovery, the revoking person shall make  
 14 himself or herself available for deposition at his or her expense in San Francisco, California.

15 **IT IS SO ORDERED.**

16  
 17 Dated: 09/23/13



1 Submitted by:

2 DATED: September 19, 2013

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22 DATED: September 19, 2013

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10 DATED: September 19, 2013

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20  
21 **ATTESTATION OF CONCURRENCE IN THE FILING**

22 Pursuant to Civil Local Rule No. 5-1(i)(3), I declare that concurrence has been obtained  
23 from each of the above signatories to file this document with the Court.

24 /s/ Belinda S Lee  
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